

Message Text

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FM AMCONSUL MONTREAL

TO SECSTATE WASHDC 6699

UNCLAS MONTREAL 1484

FROM USDEL ICAO

L/T FOR ROVINE

E.O. 11652; N/A

TAGS; PORG, ICAO

SUBJECT; MONTREAL CONFERENCE ON AIR LAW; FORM OF INSTRUMENT

1. U.S. HAS TAKEN POSITION THAT CONFERENCE SHOULD ADOPT AN INDEPENDENT NEW TREATY, CONTAINING PASSENGER PROVISION OF GUATEMALA PROTOCOL AND CARGO PROVISIONS TO BE ADOPTED AT MONTREAL, RATHER THAN ADD STILL MORE PROTOCOLS TO WARSAW COMPLEX. MANY COUNTRIES RESIST IDEA, HOWEVER, ON BASIS THEY DO NOT WANT TO BE REQUIRED TO ACCEPT GUATEMALA PASSENGER PROVISIONS WITH THE NEW CARGO RULES. RESPONDING TO THIS CONCERN, EUROPEANS HAVE PRODUCED A MODEL OF AN INDEPENDENT NEW TREATY WHICH, UNFORTUNATELY, IS COMPLICATED, SINCE IT ARRANGES WARSAW-HAGUE-GUATEMALA-GUADALAJARA AND MONTREAL PROVISIONS IN SEPARATE CHAPTERS AND ALLOWS FOR PARTIAL RATIFICATIONS (BY CHAPTER). SLOW PACE OF CONFERENCE, DISORIENTED AND UNCONNECTED NATURE OF INTERVENTIONS IN PLENARY, AND INADEQUATE PREPARTORY WORK ON FORM OF INSTRUMENT SUGGEST THEIR EFFORT MAY FAIL. IN ADDITION, USSR DELEGATION (WITH, WE ASSUME, REST OF SOVIET BLOC) IS STRONGLY OPPOSED TO ANYTHING OTHER THAN PROTOCOL TO HAGUE FOR REASONS NOT TOTALLY CLEAR, BUT POLITICAL SYMBOLISM MAY BE PART.

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2. SOVIET DELEGATION HAS APPROACHED US TO STRIKE A DEAL WHICH WOULD MEET OUR SUBSTANTIVE OBJECTIVE TO HAVE INSTRUMENTS WHICH WOULD ENABLE US TO MAINTAIN TREATY RELATIONSHIPS ONLY ON BASIS OF GUATEMALA PASSENGER AND NEW CARGO RULES, AND THEIR OBJECTIVE TO ADOPT PROTOCOLS TO WARSAW AND NOT A NEW TREATY. ORIGINAL AGENDA OF CONFERENCE WAS TO AMEND HAGUE PROTOCOL CARGO PROVISIONS, LEAVING A "MONTREAL PROTOCOL" CONTAINING HAGUE PASSENGER AND NEW CARGO RULES. THIS WOULD BE SUPPORTED. GUATEMALA CONTAINS NEW PASSENGER AND HAGUE CARGO RULES. TO REACH U.S. OBJECTIVE, TWO "SPECIAL DECLARATION" CLAUSES WOULD BE ADOPTED, ONE IN MONTREAL PROTOCOL, AND ONE AN AMENDMENT TO GUATEMALA PROTOCOL. AMENDMENT TO GUATEMALA WOULD PROVIDE THAT A STATE, UPON RATIFYING MONTREAL PROTOCOL, COULD MAKE A DECLARATION THAT THE PROVISIONS OF GUATEMALA WERE APPLICABLE TO IT ONLY WITH RESPECT TO CARRIAGE OF PASSENGERS. LIKEWISE, A CLAUSE IN MONTREAL PROTOCOL WOULD PROVIDE THAT UPON RATIFYING GUATEMALA, A STATE COULD DECLARE THAT THE PROVISIONS OF MONTREAL PROTOCOL WERE APPLICABLE TO IT ONLY WITH RESPECT TO CARRIAGE OF CARGO. U.S. TAKING ACTION ON MONTREAL AND GUATEMALA AT SAME TIME, COULD RATIFY BOTH AND MAKE BOTH SPECIAL DECLARATIONS AT SAME TIME, THEREBY BEING BOUND BY NEW RULES - GUATEMALA PASSENGER AND MONTREAL CARGO. AFTER DENOUNCING THE WARSAW CONVENTION, U.S. WOULD HAVE NO TREATY RELATIONS ON OLD SETS OF RULES.

3. WE BELIEVE PROPOSED SPECIAL DECLARATION CLAUSES REACH U.S. OBJECTIVE AND ARE RECOGNIZED BY ARTICLES 44(1) AND 57 OF VIENNA CONVENTION ON LAW OF TREATIES. WE ARE INCLINED TO SUPPORT IF INDEPENDENT TREATY APPROACH LOOKS LIKE IT WILL FLOUNDER, OR IF IT WILL OTHERWISE CONTRIBUTE TO BROAD CONSENSUS ON REVISIONS MEETING U.S. GOALS. WHILE SEEMINGLY COMPLICATED, APPROACH ALSO INVOLVES LEAST AMOUNT OF NEW DRAFTING OF ANY PROPOSAL WE HAVE SEEN THUS FAR ON FORM OF INSTRUMENT -- SINCE IT REQUIRES ONLY TWO NEW CLAUSES, DRAFTED ALIKE. APPRECIATE DEPT. COMMENTS IF ANY, ON PROPOSED SPECIAL DECLARATION CLAUSES. HARPER

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